

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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TEACHER-MARSHALL

BIAX CORPORATION * Civil Docket No. 2:05-CV-184
VS. * Marshall, Texas
*
* December 20, 2005
INTEL CORPORATION, ET AL * 3:00 P.M.

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE T. JOHN WARD
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceeding recorded by mechanical stenography, transcript
produced on CAT system.)

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12 * * * * *

13 P R O C E E D I N G S

14 THE COURT: We have a scheduling conference in
15 this case of Biax Vs. Intel, and others. What says the
16 Plaintiff?

17 MR. ALBRITTON: Your Honor, Eric Albritton and
18 Barry Graham for Biax, and we're ready to proceed.

19 THE COURT: All right. Defendants?

20 MR. GILLAM: Gil Gillam on behalf of Intel,
21 Your Honor. I have with me Chris Ottenweller, with the Orrick
22 firm, Hopkins Guy with the Orrick firm, Eric Findlay, the
23 Ramey firm and Janet Craycroft with Intel; we're ready.

24 THE COURT: All right. And then we have got --
25 let's see, we have got another Defendant, Analog Devices.

MS. AINSWORTH: Your Honor, Jennifer Ainsworth
for Analog Devices, and with me is B.D. Daniel and Jim Taylor
from Beck, Redden & Secrest.

1 THE COURT: Is that all the parties here is two
2 Defendants?

3 MS. AINSWORTH: Yes, Your Honor.

4 THE COURT: All right. Y'all have had a
5 chance, I guess, to discuss the scheduling schedule I sent to
6 you for deadlines for a trial setting in May. What changes
7 would y'all like to make to the schedule?

8 MR. ALBRITTON: Thank you, Your Honor. Just
9 two matters, one, on the proposed schedule it notes February
10 the 3rd, 2006 as the deadline to comply with Patent Rule 3-3,
11 and we've agreed to move that to February the 17th, 2006.

12 THE COURT: All right.

13 MR. ALBRITTON: The only other matter, Your
14 Honor, is on August 17th, 2006, the Court has set the deadline
15 to amend pleadings, in the parenthetical it says -- it
16 actually references May 1, 2006, and we suspect that might
17 just be a typographical error and would ask that that May 1st,
18 2006 be changed to August 17th, 2006 in the parenthetical.

19 THE COURT: Okay.

20 MR. ALBRITTON: Those are the only things that
21 relate directly to schedule.

22 There is one related issue, Your Honor, and it
23 relates to the production of documents pursuant to paragraph 3
24 of the proposed discovery order.

25 THE COURT: All right. Before we do that,

1 let's talk about mediation. Have y'all talked about who you
2 want for a mediator or do you want to mediate?

3 MR. ALBRITTON: Your Honor, we've talked about
4 it. We've not had a chance to agree on one.

5 THE COURT: Thirty days from today's date you
6 will either notify me who you have agreed to or the fact that
7 you can't agree, but don't request any particular mediator if
8 you can't agree. And the deadline will be 30 days after all
9 of the discovery.

10 Now then, is there any objections or requests
11 to modify the mandatory disclosure provisions that is found in
12 the Eastern District rules or the Court's proposed discovery
13 order?

14 Anything from the Plaintiff?

15 MR. ALBRITTON: No, Your Honor.

16 THE COURT: Any of the Defendants?

17 (No response.)

18 THE COURT: I guess silence means that you have
19 no requests for changes or objections.

20 MR. OTTENWELLER: Your Honor, I came down with
21 a case of laryngitis.

22 THE COURT: Okay.

23 MR. OTTENWELLER: I will move closer so you can
24 hear me. The Defendant Intel has no requested changes for the
25 mandatory disclosures, but we do have some changes to

1 discovery.

2 THE COURT: All right. Well, I understand the
3 discovery order, I just was asking about the mandatory
4 disclosure requirements of paragraph 1 and 3 and the mandatory
5 disclosures required under the Patent Rules. That's all my
6 question went to.

7 MR. OTTENWELLER: No suggested changes, Your
8 Honor.

9 THE COURT: All right. Now, there was a timing
10 on the disclosures under paragraph 3, is that correct?

11 MR. ALBRITTON: Yes, sir. And it also, I
12 guess, in theory could impact the disclosures under 3-4 to the
13 extent that there is overlapping.

14 The Defendants have requested a rolling
15 production of documents in this case, and we have agreed and
16 would agree to permit the Defendants 90 days from the date to
17 comply with paragraph 3, that being February the 3rd. We
18 would agree to a 90-day rolling production beginning on the
19 3rd, and then --

20 THE COURT: Are you saying that you are going
21 to have production complete by on or about May 1st or
22 something like that?

23 MR. ALBRITTON: That's correct, Your Honor.

24 MR. OTTENWELLER: And we think, Your Honor,
25 that we need approximately 120 days which would take us to

1 early June and then the documents would be --

2 THE COURT: Well, I misunderstood, I thought it
3 was an -- are you saying an additional 90 -- you are both
4 saying the same thing?

5 MR. ALBRITTON: No, we're not saying the same
6 thing. We are saying, as the Court says, May 1, basically
7 they are saying June 1 to complete the production.

8 THE COURT: Oh. We are talking about a million
9 documents, I will give them until June 1. Okay.

10 MR. ALBRITTON: And then the related issue,
11 privilege log, Your Honor, I believe that we have agreed that
12 the privilege log would be finalized 30 days after that date;
13 so, July the 1st.

14 THE COURT: July 1, okay.

15 MR. ALBRITTON: We have agreements, Your Honor,
16 as it relates to interrogatories and requests for admissions.

17 THE COURT: Well, I was trying to get these
18 dates down that are covered by the -- we are sort of mixing
19 and mingling here, but that's fine, I just want to make sure I
20 have got them down.

21 So, that's all -- I mean, the privilege log you
22 put to July 1, right?

23 MR. ALBRITTON: Yes, Your Honor.

24 THE COURT: And we gave the June 1st date to
25 comply with the production of documents either under the rules

1 -- our local rules or paragraph 3, right?

2 MR. ALBRITTON: That's correct, Your Honor.

3 THE COURT: Okay. Now then, let's talk about
4 paragraph 4 about the discovery limitations. So, tell me what
5 you believe you have got there, Mr. Albritton?

6 MR. ALBRITTON: Thank you, Your Honor. I am
7 told that July the 1st is a Saturday, so we would just ask
8 that --

9 THE COURT: Well, then it will go to July the
10 -- I tell you what, why don't give you until July the 5th.

11 MR. ALBRITTON: That would be great, Your
12 Honor.

13 THE COURT: I don't think we are going to be
14 open on July the 4th.

15 MR. ALBRITTON: I agree, Your Honor. At least
16 I hope not.

17 On interrogatories and requests for admissions,
18 we have an agreement. That agreement is each side has 60
19 common, then ADI and Intel have each an additional 20 to serve
20 on Biax, and then Biax would have an additional 20 to serve on
21 each Intel and ADI. And that applies to interrogatories and
22 requests for admissions.

23 We've also agreed that as it relates to
24 requests for admissions, there would be an unlimited number as
25 to authentication of documents and dates of publications.

1 THE COURT: Is that the agreement?

2 MR. OTTENWELLER: Yes, that's the agreement.

3 THE COURT: All right. Then what about your
4 depositions? Or tell me about the number of experts you are
5 going to have.

6 MR. ALBRITTON: Yes, sir. Unfortunately, we
7 don't have an agreement on this, Your Honor.

8 We think that -- there are five patents in the
9 case that all have the same specification, same inventors. We
10 believe that 90 hours -- I'm sorry, five experts a side would
11 be sufficient, and I believe the Defendants want four experts
12 per party.

13 THE COURT: So, one has got 10 and one has got
14 12, is that right?

15 MR. ALBRITTON: No, sir, that would be five and
16 eight.

17 THE COURT: You said four per party, that would
18 be -- there are three parties to this lawsuit, aren't there?

19 MR. ALBRITTON: Yes, sir, I apologize, I was
20 figuring on that side of the table, but in gross numbers, you
21 are right, 10 and 12.

22 THE COURT: I mean, what's the big difference
23 here, that's what I'm -- I'm trying to determine why you need
24 -- I don't know why anybody needs that many, but that doesn't
25 surprise anyone in the courtroom, I'm sure.

1 MR. OTTENWELLER: Speaking for Intel, there are
2 two different accused architectures, so we anticipate at this
3 stage having one expert for one of the architectures that will
4 handle the infringement and invalidity issues, one for the
5 different architecture of the different products. Your Honor,
6 we obviously are going to try to use as few experts as
7 possible. We anticipate that we are going to try to use just
8 one damages expert even though there are going to be multiple
9 issues, there are economic issues and royalty issues. And
10 then there is an inequitable conduct issue in the case, and we
11 will need an expert for that.

12 So, at this stage when looking at this, we
13 think that we -- we wanted to advise the Court that we think
14 we will need at least four. There is no relationship between
15 the Intel-accused products and the Analog Devices products, so
16 there is virtually no area in which there can be a sharing of
17 experts on infringement and damages.

18 MR. DANIEL: Your Honor, speaking on behalf of
19 Analog Devices, we do not sell chips to computer
20 manufacturers, we sell different types of chips to all sorts
21 of different types of -- it's not -- I mean, it's the same
22 general business, but it's not the same business as Intel.
23 Plus, there is one patent that is accused against our products
24 only. So, we have to have -- we think we can get by with
25 three, but we need an invalidity and an infringement expert on

1 that one patent, and our own damage expert. But we think we
2 can get by with three, but they have to be three different
3 from Intel. There is one expert that --

4 THE COURT: Well, how many -- how many does the
5 Plaintiff want then?

6 MR. ALBRITTON: Your Honor, we think that --
7 frankly, we don't even think we need five, but we were willing
8 to agree to five per side.

9 THE COURT: Well, if you think you don't -- you
10 don't even think you need five and you -- I am not
11 negotiating, I'm trying to make a ruling.

12 I am going to give each party -- the Plaintiff
13 four and each one of the Defendants four. If you get into the
14 case and you see you really need more, well, then raise the
15 issue with me, I will deal with it then. But right now, I
16 don't see that.

17 How many hours for depositions?

18 Yes, sir?

19 MR. OTTENWELLER: That was four for the
20 Plaintiff, four for Intel and four for Analog?

21 THE COURT: That's correct, that's what I was
22 ruling. That was the intent, I don't know what I said, but
23 that is what I intended to say.

24 Now then, what have you done about the rest of
25 the discovery?

1 MR. ALBRITTON: I think that we can agree to a
2 hundred hours per side.

3 THE COURT: Depositions of who?

4 MR. ALBRITTON: Non-parties, Your Honor.

5 THE COURT: Non-parties. And what are y'all
6 going to do about parties, anything?

7 MR. ALBRITTON: Just operate under the Court's
8 standard rules, that is 30(b)(6) witnesses.

9 THE COURT: 30(b)(6) witnesses, as long as it
10 is a reasonable number of issues. I don't usually have any
11 problem with that with lawyers that have been in this Court
12 very much.

13 All right. Anything else that we need to
14 address?

15 MR. ALBRITTON: We have a -- we have been
16 negotiating on a protective order, Your Honor.

17 THE COURT: I was going to ask you about the
18 protective order.

19 MR. ALBRITTON: And we would request that the
20 Court allow us to continue to negotiate, and no longer -- no
21 later than January the 6th, if we have not reached an
22 agreement, we will submit to the Court what is agreed upon and
23 the points of contention.

24 THE COURT: Well, your competing versions on
25 the points of contentions. So, I might like one version, but

1 I might rewrite it, but -- is that the agreement?

2 MR. OTTENWELLER: Yes, that is the agreement.

3 THE COURT: Okay. Any other things you have
4 discussed?

5 MR. ALBRITTON: Yes, sir. We have agreed, Your
6 Honor, that in lieu of underlying damage documents, that the
7 Defendants can produce damage summaries to the Plaintiff.

8 THE COURT: Damage summaries on sales
9 summaries?

10 MR. ALBRITTON: Spreadsheets, Your Honor, on
11 sales information. And we would further agree that they can
12 produce those up and to including June the 1st.

13 THE COURT: Is that the agreement?

14 MR. OTTENWELLER: Yes, Your Honor, that's the
15 agreement.

16 THE COURT: All right. This is a chip case. I
17 know there is different chips asserted against different
18 folks, but you -- the Defendants manufacture different chips.
19 Have y'all talked about a technical advisor? Obviously, the
20 Court needs one.

21 MR. ALBRITTON: We agree that that would be
22 helpful, Your Honor.

23 THE COURT: Well, do y'all want to try to agree
24 on one or do you want me just to pick one?

25 MR. OTTENWELLER: I think we should try to

1 agree on one, Your Honor.

2 THE COURT: And likewise notify me by the
3 middle of January, whatever -- let's see the 17th is on
4 Tuesday as I recall and Monday is a holiday that week. Notify
5 me who you have agreed upon as a technical advisor or that you
6 can't agree, but again, don't make a request of anybody
7 because I will try to use somebody that I've got confidence
8 in. But if y'all have got confidence in someone, then the
9 Court will be satisfied. I mean, I'm not going -- I have
10 never even thought about rejecting the parties' agreement on
11 technical advisors. But I do need one in this case, and, you
12 know, I would rather get them selected earlier rather than
13 later. Sometimes we forget to do that and we sort of get in a
14 time crunch.

15 Anything else that we can talk about?

16 MR. ALBRITTON: Nothing further for the
17 Plaintiffs, Your Honor.

18 MR. OTTENWELLER: Can I ask for a clarification
19 about the June 1 date on the evidence?

20 THE COURT: Well, it's July I thought what we
21 said on --

22 MR. ALBRITTON: June 1.

23 THE COURT: June 1.

24 MR. OTTENWELLER: That pertains to the initial
25 disclosures.

1 THE COURT: Well, you are going to have a
2 rolling disclosure. As I anticipate, you are going to start
3 producing documents in accordance with the deadline that's in
4 the order, but it's not expected that you are going to
5 complete your full disclosure until that June 1 date.

6 MR. OTTENWELLER: That's correct. I just
7 wanted to -- things may come up though, they may ask for
8 additional documents during that period, and there may be
9 documents that are located after the date that need to be
10 produced, and I just wanted to get the clarification that that
11 pertained to the initial disclosure requirement.

12 THE COURT: Well, the initial disclosure is
13 found in the Federal Rules, but I don't think the initial
14 disclosure is found in the order, is it?

15 MR. OTTENWELLER: I think it does actually use
16 that phrase.

17 THE COURT: Does it? I didn't think it did,
18 but maybe it does. But anyway, what I want you to do is by
19 June 1st we ought to have the documents about 99-point-nine
20 percent done. But if the Plaintiff comes up or you come up
21 and saying you haven't produced something, you write a letter,
22 and that should hit the table pretty soon.

23 MR. OTTENWELLER: Yes, well, that is our
24 intention, that is our goal, of course. I just wanted to get
25 that clarified.

1 THE COURT: I don't think I have had any
2 problems with Intel. I have had them sort of -- we had an
3 initial problem in a case where they had a partner named HP
4 that didn't believe that they were subject to my disclosure
5 requirement, but we got that out of the way.

6 MR. OTTENWELLER: We're past that point.

7 THE COURT: Yes, we're past that point. We
8 won't need to have those --

9 MR. OTTENWELLER: HP is not a defendant in this
10 case.

11 THE COURT: I know, but I'm just saying that
12 Ruffin Cordell is the one that caught that dose. So, he seems
13 to have survived it well.

14 MR. OTTENWELLER: No, we understand the
15 obligations in Your Honor's courtroom.

16 THE COURT: All right. That's good.

17 Anything else?

18 MR. ALBRITTON: Nothing further, Your Honor.

19 THE COURT: Happy Holidays to all of you and
20 travel safe, and thank you for being here.

21 COURT SECURITY OFFICER: All rise.

22 (Court adjourned.)

23 * * * * *

24

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.



SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/06

5-9-06
Date